

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CASE NO. 03-CR-10356-MLW

UNITED STATES

VS.

FREDERICK A. SIMONE,
a/k/a FREDDY, a/k/a
THE NEIGHBOR,

VINCENT C. GIOCCHINI,
a/k/a DEE DEE; and

FRANCIS WHITE, a/k/a
THE WHITE-HAIRED GUY

MOTION TO SUPPRESS PHYSICAL EVIDENCE NO. 3
DERIVED FROM EAVESDROPPING-RECORDING DEVICE (BUG) PLACED
AT 32 LOWTHER ROAD, FRAMINGHAM, MASSACHUSETTS

Now come the defendants, Frederick Simone, Vincent Gicchini and Francis White, in the above numbered indictment and moves this Court for an order suppressing for use in evidence all evidence obtained pursuant to the break, entry and installation of an electronic monitor-recorder device (bug) in the defendant's home at 32 Lowther Road, Framingham, Massachusetts and all evidence derived therefrom including all statements, physical evidence and subsequent evidence obtained through the derivative use of such evidence.

In support of this motion the defendants note that the warrant was unreasonable and violative of the defendant's rights secured him under the Fourth and Fourteenth Amendments to the United States Constitution in that;

- A.) The application was based upon an affidavit that failed to present a sufficient factual basis for the requisite finding of probable cause that the

defendant's residence was used as a base of illegal operation or had any nexus to any illegal operation, and;

- B.) The affidavit did not establish that normal investigative techniques had been tried and failed or were, in the alternative, unlikely to succeed. In fact, it was clear that the previously implemented electronic surveillance techniques were succeeding and the intrusive placement of the bug was not required and constituted an effort to obtain more evidence based upon speculation and an effort to use this most offensive and intrusive investigative technique with a hope that it would merely assist in the investigation that was on-going.

WHEREFORE the defendants move for suppression of all evidence as requested herein. An affidavit and memorandum of law is annexed hereto and incorporated herein by reference. Appendix to Motion to Suppress No. 3 will be hand delivered to the Clerk's Office. The defendants request a hearing with argument on this motion.

Frederick Simone
By his attorney

/s/Kevin J. Reddington

Francis White,
By his attorney

/s/ Richard M. Egbert, Esq.

Vincent C. Giocchini,
By his attorney

/s/ Robert George, Esq.